

as its own construction permit was concerned, it was engaged in an aggressive series of maneuvers designed to prevent Press from establishing its own operation on Channel 18 in the Orlando area. As the Commission is aware, Rainbow fought Press' channel swap every step of the way, all the way to the Court of Appeals. A core argument advanced by Rainbow throughout that more-than-two-year effort was the notion that Press did not have reasonable assurance of its proposed transmitter site. But in its own litigation against the tower owner, Rainbow expressly admitted that Press *did* have such reasonable assurance.^{22/} Rainbow's overall course of conduct, including its efforts to block Press' use of the tower, constitutes a gross abuse of the processes of both the Commission and the courts. Before Rainbow's application could be granted, a hearing into this aspect of Rainbow's basic qualifications would have to be held.

54. Fines/Forfeitures. Press does not believe that any hearing here will ultimately

^{22/} Rainbow's claim that Press did not have reasonable assurance appears to have been based largely on Rainbow's own assertion that Rainbow had some exclusive claim to that portion of the tower which Press proposed to use. The trouble with Rainbow's assertion is that, as Judge Marcus concluded in the tower litigation, no such exclusivity had been provided, or even bargained for. In Judge Marcus' words,

[Rainbow's] lease by its terms *plainly* and *unambiguously* provides Rainbow *only* with "non-exclusive" use of the top television antenna space. . . . We do *not* believe that the parties to this contract bargained for Rainbow's "exclusive" use of the top television antenna space on Gannett's Bithlo Tower. The contract *specifically* provides for "non-exclusive" use, and, we find that *no one* at Gannett *ever* represented to Rainbow that it would enjoy "exclusive" use of the top of the Tower.

* * *

[T]he *plain language* of the agreement of lease does *not* grant [Rainbow] "exclusive" use of the top television antenna space. . . . The Lease may "fairly" be interpreted in *only one way*. Its terms are *unambiguous* and its meaning *plain*. . . . [T]he agreement specifically does *not* grant "exclusive" use of the top slot of the Bithlo Tower. . . . Moreover, we have found that Gannett *never* promised [Rainbow] "exclusive" use of the Tower, *nor did the parties bargain for "exclusive" use*.

. . . [T]he Lease was a product bargained for at arms length by attorneys who were aware of the Lease's provisions regarding non-exclusivity. In fact, [Rainbow's] attorney . . . could not testify that the issue of "exclusivity" was even addressed during negotiations. [He] specifically stated that all he understood was that he was to bargain for the "top slot". He did not recall that "exclusivity" was discussed and admitted that he did not object to the explicit provision contained in the Lease stating that the "leased premises" were leased on a "non-exclusive" basis.

See Joseph Rey, *supra*, slip opinion at 3, 9-10, 12 (emphasis added).

be necessary because the simple affirmance of Ms. Kreisman's actions will obviate the need for such a hearing. However, in the unlikely event that a hearing were to be designated, Press wishes to emphasize that the hearing designation order should include a provision for substantial fines and forfeitures to be assessed against Rainbow in the event (which Press believes likely) that the issues are resolved adversely to Rainbow. Rainbow's extensive and consistent course of misconduct cannot and should not go unpunished.

CONCLUSION

55. The Commission does not issue construction permits so that they can be stashed away, unbuilt, for future sale.^{23/} To the contrary, permits are issued with the expectation -- indeed, the requirement -- that the stations be built and operation commenced promptly, *i.e.*, within two years for television stations.

56. Rainbow has held its permit since 1984, almost ten years. Rainbow's permit has been final and immune from judicial challenge for almost three full years. And yet, Rainbow has made virtually no progress in the construction of its station in those three years, and absolutely no progress in the last 18 months. Despite the fact that Rainbow confidently asserted in January, 1991 that it was "ready, willing and able" to build, and despite the fact that Rainbow confidently asserted in June, 1991, without condition or caveat, that it would complete construction by December 31, 1992, and despite the fact that the Commission effectively gave Rainbow a more-than-33-month term (from August 30, 1990 to June 18, 1993) in which to make good on those assertions, Rainbow has done nothing.

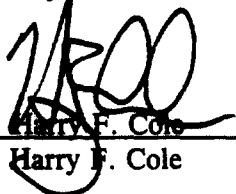
57. In light of Rainbow's unjustified and unjustifiable failure to construct, no reason

^{23/} In the unlikely event that the Commission has not considered that Rainbow may be expecting to try to sell its permit or station at the earliest opportunity, Press notes that such a sale seems to be contemplated even in the "Equipment Loan Agreement" tendered by Rainbow with its Petition. Paragraph 4 of that document makes clear that the repayment to the lender would include a percentage of "the proceeds from the sale of the Station".

exists for extension of Rainbow's permit. Accordingly, Ms. Kreisman's denial of Rainbow's extension application was correct. This was solidly supported by Commission precedent, and is especially consistent with Commission policy. Rainbow had ample opportunity to build, and it chose not to. The post hoc, post-cancellation claims now being advanced by Rainbow are just more of the same unreliable, immaterial, inconsequential drivel which Rainbow has been serving on the Commission for more than two years already. What Rainbow is entitled to is a substantial fine; it should be grateful if its Petition is merely denied.

WHEREFORE, for the reasons stated, Press Broadcasting Company, Inc. opposes the "Petition for Reconsideration and Grant of Application for Assignment of Construction Permit" filed by Rainbow Broadcasting Company. Press urges that the decision below be affirmed or that, in the alternative, Rainbow be designated for hearing on issues described above, with a provision for substantial forfeiture in the event that any or all of those issues are resolved adversely to Rainbow.

Respectfully submitted,


/s/ ~~Harry F. Cole~~
Harry F. Cole

Bechtel & Cole, Chartered
1901 L Street, N.W.
Suite 250
Washington, D.C. 20036
(202) 833-4190

Counsel for Press Broadcasting
Company, Inc.

July 12, 1993

ATTACHMENT A

Letter (Ref. 18000E1-PRG), dated June 18, 1993
from Barbara Kreisman, Chief, Video Services Division,
to Counsel for Rainbow and Press

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

JUN 18 1993

IN REPLY REFER TO:

1800E1-PRG

Rainbow Broadcasting Company
c/o Margot Polivy, Esq.
Renouf & Polivy
1532 Sixteenth Street, NW
Washington, DC 20036

Press Television Corporation
c/o Harry F. Cole, Esq.
Bechtel & Cole, Chartered
1901 L Street, NW
Suite 250
Washington, DC 20036

Re: Station WRBW(TV)
Orlando, FL
File Nos. BMPCT-910625KP
BTCCT-911129KT

Dear Counselors:

This is with respect to the above-captioned applications of Rainbow Broadcasting Company (Rainbow) for: (1) an extension of time to construct station WRBW(TV), Orlando, Florida; and (2) authorization for a pro forma assignment¹ of its construction permit to Rainbow Broadcasting, Ltd. Press Television Corporation (Press), licensee of station WKCF(TV), Clermont, Florida, has filed informal objections to the applications. The parties have also filed several other responsive pleadings.

BACKGROUND

In 1984, after a comparative hearing, the Commission granted Rainbow a permit to construct a UHF television station in Orlando. Metro Broadcasting, Inc., 99 FCC 2d 688 (Rev. Bd. 1984), rev. denied, FCC 85-558 (released October 18, 1985), held in abeyance, 2 FCC Rcd 1474 (1987), aff'd, 3 FCC Rcd 866 (1988), aff'd, Winter Park Communications, Inc. v. F.C.C., 873 F.2d 347 (1989), aff'd, Metro Broadcasting, Inc. v. F.C.C., 110 S. Ct. 2997 (1990). Although Rainbow's initial permit expired during the appellate process, we have since

¹ Rainbow submitted the application as a transfer of control. However, because Rainbow seeks to change the legal identity of the licensee, it is properly considered an assignment.

extended or reinstated the permit five times. Thus, Rainbow has held a valid permit for a total of 32 months since the grant became final. The most recent extension was for the period from February 5 - August 5, 1991.²

Rainbow stated in its application for an extension that it had not ordered any equipment to construct its facilities. However, by letter dated November 27, 1991, nearly four months after the end of the extension period, the permittee alleged that it had that month completed the construction of a transmitter building at its transmitter/antenna location; Rainbow asserted that it had begun the construction in July, 1991, and that it was still engaged in the selection of equipment for the station.³

Section 73.3534(b) of the Commission's Rules sets forth the conditions under which a construction permit can be extended. Pursuant to that Rule, we can grant the extension application only upon a showing that construction is complete, that substantial progress has been made (equipment is on order or on hand, the site is acquired and cleared, and construction is proceeding towards completion), or that no progress has been made due to circumstances clearly beyond the permittee's control. The first condition clearly has not been met. With regard to the second, Rainbow's failure to order equipment falls far short of the requirement of substantial progress contemplated by the Rule. Accordingly, we shall address the applicant's contention that circumstances beyond its control have prevented construction.

Two such factors have prevented timely construction, Rainbow maintains. The first is the appellate process which did not end until 1990. The second obstacle, according to the permittee, is a conflict with Guy Gannett Broadcasting Services (Gannett), the owner of the tower from which Rainbow is authorized to operate. In its extension request, Rainbow asserts that a "dispute with the tower owner" delayed construction. Asserting that Gannett granted it an exclusive lease for the section near the top of the tower, Rainbow sued Gannett in federal district court to prevent it from renting that space to Press. However, on June 6, 1991, before Rainbow filed the extension

² File No. BMPCT-910125KE. Press's petition for reconsideration of that extension was still pending when Rainbow filed the current extension application. Because of our denial of Rainbow's application, we shall dismiss Press's petition for reconsideration as moot.

³ By letter dated March 22, 1993, the staff requested Rainbow to provide a detailed explanation of what specific actions towards construction the permittee had taken since November 27, 1991. Rainbow responded that it took no further actions after that date. The permittee claims that release of the funds needed to purchase equipment and construct the station is tied to Commission approval of its pro forma assignment application. However, reorganization of the permittee and the infusion of new capital are not bases for the grant of an extension application. See High Point Community Television, Inc., 2 FCC Rcd 2506 (1987). Moreover, because Rainbow filed the assignment application several months after the end of its last extension period, it is irrelevant to its showing concerning the lack of substantial progress of construction during that time.

application now before us, the court denied its motion for a preliminary injunction. The permittee states that after that denial, it notified Gannett of its intention to commence construction and requested that the lease provisions regarding construction bids be effectuated.

Press argues that the dispute with Gannett did not prevent Rainbow from constructing.⁴ According to Press, Rainbow never asserted in its lawsuit that Gannett's proposed lease with Press would prevent Rainbow from constructing. To the contrary, Press presents the sworn testimony of Rainbow general partner Joseph Rey, given in connection with Rainbow's suit against Gannett, stating that Rainbow could proceed at any time with construction, but that it did not want to share the valuable space near the top of the tower with Press.

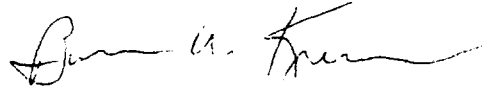
In addressing the merits of an application for extension, we note that the permittee's actions during the most recent extension period form the sole basis of whether it has complied with Section 73.3534(b). See, e.g., Metrovision, Inc., 3 FCC Rcd 598 (VSD, 1988). Because the last extension period began in February, 1991, many months after the appeals process terminated, Rainbow's argument that the appeal delayed construction is not relevant. Therefore, our sole concern is whether circumstances beyond the permittee's control prevented construction (or substantial progress) during the most recent extension period. Based on the information before us, we find that the permittee's lack of progress is not due to circumstances beyond its control, and that Rainbow has therefore failed to meet the requirements for obtaining an extension of time.

In making our finding we note that Rainbow cannot rely on its claim that Gannett's planned lease with Press impaired its ability to proceed with construction. Instead, the record reflects that the permittee clearly chose not to begin construction, and that the dispute with Gannett was not over whether Rainbow could construct but rather over whether it could prevent a competitor from utilizing its site. It was only after Rainbow failed to obtain a preliminary injunction against Gannett that it initiated steps toward construction. Undoubtedly, then, the dispute with Gannett was not a circumstance beyond Rainbow's control that impeded construction. We therefore find that Rainbow made a deliberate business judgment not to construct, pending the outcome of its motion for preliminary injunction. This decision was clearly within the permittee's control and cannot be used to justify an extension. See, e.g., High Point Community Television, above. Accordingly, on the basis of the facts set forth in Rainbow's application, we are unable to find that construction of the station was prevented by causes beyond the permittee's control, and therefore Rainbow's application for an extension of time is denied. Therefore, we also dismiss as moot Rainbow's pro forma assignment application.

⁴ Press also raises issues regarding Rainbow's financial qualifications, alleged anti-competitive behavior, abuse of Commission processes, misrepresentation, and lack of candor. Our disposition of Rainbow's extension application makes it unnecessary to address these issues.

Accordingly, the informal objections of Press Television Corporation are granted, and the application of Rainbow Broadcasting Company for an extension of time within which to construct station WRBW(TV), Orlando, Florida, is denied. Further, the construction permit of Rainbow Broadcasting Company for station WRBW(TV), Orlando, Florida, is cancelled, the call sign WRBW(TV) is deleted, and the application of Rainbow Broadcasting Company to assign the construction permit for station WRBW(TV), Orlando, Florida, to Rainbow Broadcasting, Ltd., is dismissed as moot.

Sincerely,

A handwritten signature in dark ink, appearing to read "Barbara A. Kreisman", with a long, sweeping horizontal stroke at the end.

Barbara A. Kreisman
Chief, Video Services Division
Mass Media Bureau

ATTACHMENT B

Application (File No. BPCT-880711KE)
for Extension/Reinstatement of Construction Permit
(filed July 11, 1988)

United States of America
FEDERAL COMMUNICATIONS COMMISSION

APPLICATION FOR EXTENSION OF CONSTRUCTION PERMIT
OR TO REPLACE EXPIRED CONSTRUCTION PERMIT

INSTRUCTIONS

- A. This form is to be used in all cases when applying for additional time to construct a station or when applying for construction permit to replace expired permit. See the following Parts of the Commission's Rules:

BROADCAST - Part 73
COMMON CARRIER - Parts 21, 23 and 25

- B. Prepare and file original and one copy. File with the Federal Communications Commission, Washington, D.C. 20554 (Sign all copies)

- C. The name of the applicant must be stated exactly as it appears on the construction permit/expired construction permit.

- D. This application shall be personally signed by the applicant. If any applicant is an individual, by one of the partners; if the applicant is a partnership, by an officer; if the applicant is a corporation, by a member who is an officer. If the applicant is an unincorporated association, by such duly elected or appointed officials as may be competent to do so under the laws of the applicable jurisdiction; if the applicant is an eligible government entity; or by the applicant's attorney in case of the applicant's physical disability or of her/his absence from the United States. The attorney shall, in the event he/she signs for the applicant, separately set forth the reason why the application is not signed by the applicant. In addition, if any matter is stated on the basis of the attorney's belief only (rather than knowledge), he/she shall separately set forth reasons for believing that such statements are true.

- E. [Broadcast applicants only - Item 6 (c)]
Completion of construction includes the time required for testing and filing FCC Form 302 for broadcast station license.

- F. [Broadcast applicants only - Item 7]
Applicants must explain fully, status of construction, reasons for delays in commencement/completion of construction and detailed steps being taken to remedy delays.

- G. Filing date is determined by date application is received in FCC.

- H. BE SURE ALL NECESSARY INFORMATION IS FURNISHED AND ALL PARAGRAPHS ARE FULLY ANSWERED. IF ANY PORTIONS OF THE APPLICATION ARE NOT APPLICABLE SPECIFICALLY SO STATE. DEFECTIVE OR INCOMPLETE APPLICATIONS MAY BE RETURNED WITHOUT CONSIDERATION.

FOR COMMISSION USE ONLY

FILE NO.

1. Legal name of applicant (See instruction C)

Rainbow Broadcasting Company

2. Address (Number, street, city, state, ZIP code)

c/o 3DI Corp.
7110 N.W. Fiftieth Street
Miami, Florida 33166

RECEIVED

Telephone No. (Include Area Code)

(305) 591-9416

Federal Communications Commission

3. PURPOSE OF APPLICATION: (Check one of the Secretary

- a. Additional time to construct radio station ☐
b. Construction permit to replace expired permit ☒
(Not to be used under Part 21)

4. IDENTIFICATION OF OUTSTANDING CONSTRUCTION PERMIT.

File Number

BPCT-820809KF

Call Letter

WRBW(TV)

Frequency

UHF

Channel No. (Broadcast applicants only)

65

Station Location

Orlando, Florida

5. Other (Broadcast applicants only)

Submit as Exhibit No. _____ a list of the file numbers of pending applications concerning this station, e.g., major or minor modifications, assignments, etc. N/A

6. EXTENT OF CONSTRUCTION

- (a) Has equipment been delivered?

☐ Yes ☒ No

IF NO, answer the following:

From whom ordered (If no order has been placed, so indicate)

See attached Exhibit 1

Date Ordered

Date Delivery Promised

- (b) Has installation commenced?

☐ Yes ☒ No

IF YES, submit as Exhibit _____ a description of the extent of installation and the date installation commenced.

- (c) Estimated date by which construction can be completed.

See attached Exhibit 1

7. (a) If application is for extension of construction permit, submit as Exhibit 1 reason(s) why construction has not been completed.

- (b) If application is to replace an expired construction permit, submit as Exhibit _____ the reason for not submitting a timely extension application, together with the reason(s) why construction was not completed during the period specified in the construction permit or subsequent extension(s).

8. Are the representations contained in the application for construction permit still true and correct?

☒ YES ☐ NO

If No, give particulars in Exhibit

THE APPLICANT hereby waives any claim to the use of any particular frequency or of electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application (See Section 304 of the Communications Act of 1934).

THE APPLICANT represents that this application is not filed for the purpose of impeding, obstructing, or delaying determination on any other application with which it may be in conflict.

THE APPLICANT acknowledges that all statements made in this application and attached exhibits are considered material representations, and that all the exhibits are a material part hereof and are incorporated herein as if set out in full in the application.

CERTIFICATION

I certify that the statements in this application are true, complete and correct to the best of my knowledge and belief, and are made in good faith.

Signed and dated this 5th day of July, 1988.

WILLFUL FALSE STATEMENTS MADE ON THIS FORM
ARE PUNISHABLE BY FINE AND IMPRISONMENT, U.S.
CODE, TITLE 18, SECTION 1001.

Rainbow Broadcasting Company

(Legal Name of Applicant)

Joseph Rey
(Signature)

Title Partner

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended.

The principal purpose(s) for which the information will be used is to determine if the benefit requested is consistent with public interest.

The staff, consisting variously of attorneys, analysts, engineers, and application examiners, will use the information to determine whether the application should be granted, dismissed, or designated for hearing.

If all the information requested is not provided, the application may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Accordingly, every effort should be made to provide all necessary information. Your response is required to obtain this authority.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P. L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a (e) (3), AND THE PAPERWORK REDUCTION ACT OF 1980, P. L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

EXHIBITS furnished as required by this form:

Exhibit No.	Name of officer or employee (1) by whom or (2) under whose direction exhibit was prepared (show which).	Official Title
1	Joseph Rey	Partner

RAINBOW BROADCASTING COMPANY EXHIBIT 1

Rainbow Broadcasting Company's application for construction permit for Channel 65, Orlando, Florida was granted by Commission Order, FCC 85-558, released October 18, 1985. By that Order the F.C.C. denied applications for review of a Review Board decision (FCC 84R-85, released December 3, 1984) granting Rainbow's application. The Commission's decision was appealed to the United States Court of Appeals for the District of Columbia Circuit (Case No. 85-1755). After submission of the written briefs but before oral argument, the Commission requested that the Court return the proceeding to the F.C.C. Upon remand (by order of November 5, 1986), the Commission determined that "this licensing proceeding would be held in abeyance pending the outcome of the FCC's proceeding in MM Docket No. 86-484" (F.C.C.'s Report to the Court, dated February 29, 1988, appended hereto as Attachment A).

It was not until June 9, 1988 that the proceeding was ordered returned by the Court of Appeals (Order appended hereto as Attachment B). The case is presently scheduled for oral argument in the Court of Appeals on November 21, 1988.

In view of the foregoing chronology, Rainbow has not yet been in a position to undertake construction on Channel 65, Orlando absent the threat of judicial reversal of the license award. Moreover, from November 5, 1986 through June 9, 1988,

the period during which the proceeding was returned to the F.C.C. and placed in abeyance by the Commission, Rainbow's construction permit could not be considered to have been "final"-- i.e., a construction permit upon which Rainbow would have been permitted to construct and operate on Channel 65, Orlando.

In view of the fact that Rainbow's construction permit was never "final" in any practical sense and from November 1986 to June 1988 was also not final in a legal sense, Rainbow did not believe a request for extension was necessary. For this reason, Rainbow did not file a Form 701 with the F.C.C. and is now doing so only to comply with the letter from Clay C. Pendarvis, Chief, Television Branch, dated June 21, 1988.

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

WINTER PARK COMMUNICATIONS, INC.,)	
Appellant,)	
)	
v.)	No. 85-1755
)	(and consolidated case)
FEDERAL COMMUNICATIONS COMMISSION,)	
Appellee,)	
)	
RAINBOW BROADCASTING COMPANY, <u>et al.</u> ,)	
Intervenors.)	

STATUS REPORT

This status report is filed pursuant to the Court's Order of November 5, 1986. That Order remanded the records in these cases to the Commission, as set forth in motions for remand filed by the Commission and appellant Metro Broadcasting, Inc., and directed the parties to file status reports at forty-five day intervals. As stated in its previous status reports, the Federal Communications Commission determined on remand that this licensing proceeding would be held in abeyance pending the outcome of the FCC's proceeding in MM Docket No. 86-484.¹

On January 14, 1987, the Commission, in compliance with Public Law No. 100-202,² closed MM Docket 86-484, thereby terminating the reexamination of its comparative licensing policies based on racial, ethnic or gender preferences. In further compliance with Pub. L. No.

¹ Reexamination of the Commission's Comparative Licensing Distress Sales and Tax Certificate Policies Premised on Racial, Ethnic or Gender Classifications, MM Docket No. 86-484, 1 FCC Rcd 1315 (1986).

² Making Further Continuing Appropriations for Fiscal Year 1988 and for Other Purposes, Pub. L. No. 100-202 (signed Dec. 22, 1987).

100-202, the Commission ordered that its comparative licensing policies based on racial, ethnic or gender preferences that were in effect prior to September 12, 1986 be reinstated and that the presiding Administrative Law Judges, the Review Board and the Office of the General Counsel process all comparative licensing cases in a manner consistent with Commission policy in effect prior to September 12, 1986. Order, FCC 88-17, adopted January 14, 1988.³

The instant proceeding is one of three proceedings now pending at the Commission on remand from the Court in conjunction with the now terminated MM Docket No. 86-484. The Chairman of the Commission has instructed the General Counsel to prepare items for the Commission's consideration in these three proceedings, in order to bring these proceedings into compliance with Pub. L. No. 100-202. The General Counsel expects to circulate these items to the Commission shortly. Commission counsel will notify the Court immediately after the Commission has taken action on the item relating to the instant case.

Respectfully submitted,

Roberta L. Cook,
Counsel.

Federal Communications Commission
Washington, D.C. 20554
(202) 632-6444

January 19, 1988

3 A copy of the Order is attached to this status report.

Before the
Federal Communications Commission
Washington, D. C. 20554

FCC 88-17
37262

In Re)
)
Reexamination of the)
Commission's Comparative)
Licensing, Distress Sales) MM Docket No. 86-484
and Tax Certificate Policies)
Premised on Racial, Ethnic)
or Gender Classifications)

Order

Adopted: January 14, 1988

;Released: January 14, 1988

By the Commission

1. On December 17, 1986, the Commission adopted a Notice of Inquiry (Notice)¹ in this proceeding to reexamine certain policies based on racial, ethnic or gender classifications. These policies are first, the application of racial, ethnic, and gender preferences in comparative licensing proceedings for broadcast stations; second, the administration of the Commission's distress sale policy to permit minority acquisition of broadcast stations designated for hearing on basic qualifications issues; and third, the issuance of tax certificates for sales of broadcast properties to minorities. The reexamination of these policies was prompted by questions raised by an order of the United States Court of Appeals of the District of Columbia Circuit in Steele v. FCC².

2. In the Notice, the Commission ordered the presiding administrative law judges, the Review Board, and the Office of the General Counsel to hold in abeyance all decisions in comparative licensing proceedings in which the award of a racial/gender preference was dispositive, pending resolution of this proceeding.³ The Commission further ordered the Mass Media Bureau to hold in

1 52 Fed. Reg. 596 (Jan. 7, 1987).

2 Case No. 84-1176 (D.C. Cir. motion for remand granted Oct. 9, 1986).

3 See also Order, MM Docket No. 86-484, 2 FCC Rcd 2377 (1987).

September 12, 1986.⁷

6. In further compliance with this law, we will rescind our orders in this proceeding (1) to hold in abeyance decisions in comparative licensing proceedings in which the award of a racial/gender preference is dispositive; and (2) to hold in abeyance all pending or future applications for preferential treatment under our distress sale policy. All cases held in abeyance pursuant to the Notice will be processed in accordance with Commission policies and standards in effect prior to September 12, 1986.

7. Accordingly, IT IS ORDERED that MM Docket No. 86-484 is hereby closed and terminated, and that the Commission staff shall cease all actions to repeal, retroactively apply changes in, or reexamine its comparative licensing, distress sale and tax certificate policies designed to expand minority and female broadcast station ownership.

8. IT IS FURTHER ORDERED that the Commission staff continue to implement its comparative licensing, distress sale, and tax certificate policies designed to further minority and female ownership of broadcast properties in effect prior to September 12, 1986.

9. IT IS FURTHER ORDERED that (1) the presiding administrative law judges, the Review Board, and the Office of the General Counsel process all comparative licensing cases in a manner consistent with Commission policy in effect prior to September 12, 1986; and (2) the Mass Media Bureau process all applications for distress sale authority pursuant to the minority ownership policy statement in a manner consistent with prior Commission policy.

10. Pursuant to Section 553 of the Administrative Procedure Act, the Commission finds for good cause that the Order adopted herein may be promulgated without prior public notice and comment thereon because the Commission's action is mandated by Pub. L. No. 100-202 (signed Dec. 22, 1987).

11. IT IS FURTHER ORDERED that this Order shall become effective upon adoption. Good cause exists for such action. See para. 10 supra.

⁷ As discussed in detail in the Notice, these policies have been articulated in a series of policy statements and Commission and court decisions. In addition to the sources cited in the appropriations legislation, minority preference policies were established in TV 2, Inc. v. FCC, 435 F.2d 929 (D.C. Cir. 1970), cert. denied, 406 U.S. 966 (1971).

THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Winter Park Communications, et al.,)	
Appellant,)	
)	
v.)	No. 85-1755
)	
Federal Communications Commission,)	
Appellee.)	
rainbow Broadcasting Co., et al.,)	
Intervenors.)	

CERTIFICATE OF SERVICE

I, Sharon D. Freeman, hereby certify that the foregoing "Status Report" was served this 19th day of January, 1988, by mailing true copies thereof, postage prepaid, to the following persons at the addresses listed below:

Margot Polivy, Esq.
Renouf & Polivy
1532 16th Street, N.W.
Washington, DC 20036

Robert J. Buenzie, Esq.
Shack, Buenzie & Hill
1140 Connecticut Ave., N.W.
Washington, DC 20036

Dr. James Madison, Esq.
Winter Park Chamber of Commerce
150 N. New York Avenue
Winter Park, FL 32789

John H. Midlen, Esq.
Metro Broadcasting, Inc.
1050 Wisconsin Ave., N.W.
Washington, DC 20007

C. Brent McCaghren, Esq.
City of Winter Park
401 South Park Avenue
Winter Park, FL 32789

Thomas E. Francis, Esq.
Lowndes, Drosdick, Doster, etc.
215 North Eola Drive
Orlando, FL 32801

Sharon D. Freeman

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 84-1176

September Term, 19₈₇

James U. Steele,

Appellant

v.

Federal Communications Commission,

Appellee

Dale Bell,

Intervenor

88-1221

James U. Steele,

Appellant

v.

Federal Communications Commission,

Appellee

Dale Bell,

Intervenor

United States Court of Appeals
For the District of Columbia Circuit

FILED JUN 09 1988

CONSTANCE L. DUPRÉ
CLERK

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

- 2 -

No. 85-1755

September Term, 19₈₇

Winter Park Communications,

Appellant

v.

Federal Communications Commission,

Appellee

Rainbow Broadcasting Company, et al.,

Intervenors

And Consolidated Case No. 85-1756

O R D E R

Upon consideration of appellant's in No. 84-1176 motion for clarification and recall of mandate and appellant's motion to recall the record in Nos. 85-1755 et al., it is ORDERED by the Court as follows:

- 1) The mandate issued by the Court on October 9, 1986 in No. 84-1176 is hereby recalled and appellee is directed to return the mandate as promptly as possible.
- 2) Nos. 84-1176 and 88-1221 are hereby consolidated for all purposes.
- 3) The record in Nos. 85-1755 et al. is hereby recalled and appellee is directed to return the record as promptly as possible.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

- 3 -

No. 84-1176, et al.

September Term, 19₈₇

- 4) The Clerk shall set the above-captioned cases for argument on the same day before a randomly selected panel.

FOR THE COURT:
Constance L. Dupré
Clerk

By:



Robert A. Bonner
Deputy Clerk

ATTACHMENT C

Application (File No. BPCT-890510KG)
for Reinstatement of Construction Permit
(filed May 10, 1989)

APPLICATION FOR EXTENSION OF BROADCAST CONSTRUCTION
PERMIT OR TO REPLACE EXPIRED CONSTRUCTION PERMIT
(CAREFULLY READ INSTRUCTIONS ON BACK BEFORE COMPLETING)

For Commission Use Only

File No.

1. Legal Name of Applicant (See Instruction C)

RAINBOW BROADCASTING COMPANY

3. PURPOSE OF APPLICATION:

- ☐ a. Additional time to construct broadcast station
☒ b. Construction permit to replace expired permit

2. Mailing Address (Number, street, city, **RECEIVED**

3DI Corp.
7110 N.W. Fiftieth Street
Miami, Florida 33166 MAY 10 1989

4. IDENTIFICATION OF OUTSTANDING CONSTRUCTION PERMIT:

File Number BPCT-820809KF	Call Letters WRBW(TV)
Frequency UHF	Channel No. 65

Telephone No. (Include Area Code)

(305) 591-9416

FCC

Office of the Secretary

Station Location

Orlando, Florida

OTHER:

Submit as Exhibit No. none a list of the file numbers of pending applications concerning this station, e.g., major or minor modifications, assignments, etc.

6. EXTENT OF CONSTRUCTION:

Has equipment been delivered? ☐ YES ☒ NO

(b) Has installation commenced? ☐ YES ☒ NO

If NO, answer the following:

From Whom Ordered (If no order has been placed, so indicate)

N/A

If YES, submit as Exhibit No. _____ a description of the extent of installation and the date installation commenced.

Date Ordered

Date Delivery Promised

(c) Estimated date by which construction can be completed.
within 24 months of completion of judicial review

7. (a) If application is for extension of construction permit, submit as Exhibit No. _____ reason(s) why construction has not been completed.

(b) If application is to replace an expired construction permit, submit as Exhibit No. 1 the reason for not submitting a timely extension application, together with the reason(s) why construction was not completed during the period specified in the construction permit or subsequent extension(s).

8. Are the representations contained in the application for construction permit still true and correct? ☒ YES ☐ NO

If NO, give particulars in Exhibit No. _____

The APPLICANT hereby waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

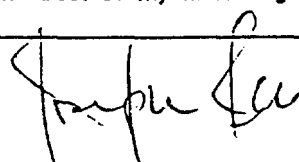
The APPLICANT acknowledges that all the statements made in this application and attached exhibits are considered material representations and that all the exhibits are a material part hereof and are incorporated herein as set out in full in the application.

CERTIFICATION

I certify that the statements in this application are true and correct to the best of my knowledge and belief, and are made in good faith.

Legal Name of Applicant
Rainbow Broadcasting Company

Signature



Title Partner

Date May 8, 1989

RAINBOW BROADCASTING COMPANY EXHIBIT 1

Rainbow Broadcasting Company's application for construction permit for Channel 65, Orlando, Florida was granted by Commission Order, FCC 85-558, released October 18, 1985. By that Order the F.C.C. denied applications for review of a Review Board decision (FCC 84R-85, released December 3, 1984) granting Rainbow's application. The Commission's decision was appealed to the United States Court of Appeals for the District of Columbia Circuit (Case No. 85-1755). After submission of the written briefs but before oral argument, the Commission requested that the Court return the proceeding to the F.C.C. Upon remand (by order of November 5, 1986), the Commission determined that "this licensing proceeding would be held in abeyance pending the outcome of the FCC's proceeding in MM Docket No. 86-484" (Commission Report to the Court, dated February 29, 1988).

It was not until June 9, 1988 that the proceeding was ordered returned by the Court of Appeals. The case was decided by the United States Court of Appeals for the District of Columbia Circuit on April 21, 1989. The mandate of the Court has not yet issued and the time for reconsideration or appeal has not yet run.

In view of the foregoing chronology, Rainbow has not yet been in a position to undertake construction on Channel 65, Orlando absent the threat of judicial reversal of the license award. Moreover, from November 5, 1986 through June 9, 1988, the period during which the proceeding was returned to the F.C.C. and placed in abeyance by the Commission, Rainbow's construction permit could not be considered to have been "final", i.e., a construction permit upon which Rainbow would have been permitted to construct and operate on Channel 65, Orlando.

In view of the fact that Rainbow's construction permit was never "final" in any practical sense and from November 1986 to June 1988 was also not final in a legal sense, Rainbow does not believe a request for extension was necessary. This Form 307 request is being filed only to comply with the letter from Clay C. Pendarvis, Chief, Television Branch, dated April 10, 1989 and to preserve Rainbow's call letters and frequency.